

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

HERTZ EQUIPMENT RENTAL
CORPORATION

Employer

and

Case 4–RC–20691

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 542, AFL-CIO

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

The Employer, Hertz Equipment Rental Corporation, is engaged in the sale and rental of construction equipment from two locations, its main facility in Allentown, Pennsylvania and a leased trailer in Mehoopany, Pennsylvania. The Petitioner, International Union of Operating Engineers, Local 542, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer’s Shop Mechanics, Road Mechanics, Truckdrivers, and Tool Room Coordinator at these two locations.¹

The parties disagree as to the scope and composition of the unit. The Employer contends that only a single-location unit is appropriate. The parties agree that the unit should include Shop Mechanics, Road Mechanics, and Truckdrivers. They disagree as to whether two other classifications should also be included, Tool Room Coordinator and Sales Coordinator. The Petitioner contends that the unit should include the Tool Room Coordinator, who works at the Mehoopany site, while the

¹ The Petitioner initially petitioned for “All Full Time Shop Mechanics, Truck Drivers and Tool Room Attendants.” At the hearing, the Petitioner amended its petition to include the Road Mechanics.

Employer takes a contrary position, asserting that this position does not share a community of interest with the other unit employees. The Employer contends that Sales Coordinator Bruce Heitzman should be included in the unit as a dual-function employee. The Employer also contends that if the Tool Room Coordinator is included in the unit, then both of the Employer's Sales Coordinators should be included on community-of-interest grounds. The Petitioner would exclude the Sales Coordinators. A hearing officer of the Board held a hearing, and the parties filed briefs with me.²

I have considered the evidence and arguments presented by the parties concerning the scope and composition of the unit, and I have concluded that the unit sought by the Petitioner is not appropriate. While I agree with the Petitioner that the Tool Room Coordinator should be included in the unit, I further find that employees in the petitioned-for unit do not share a community of interest separate and apart from the Sales Coordinators and that Sales Coordinators also should be included in the unit. I also find that Heitzman should be included in the unit on the alternate ground that he is a dual-function employee.

In this Decision, I will first provide a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether the unit sought by the Petitioner is an appropriate unit and whether Heitzman should be included in the unit as a dual-function employee. Finally, I will present in detail the facts and reasoning that support my conclusions.

I. OVERVIEW OF OPERATIONS

The Employer rents construction equipment, such as backhoes, forklifts, dump trucks, compressors, generators, and power tools, to various contractors and delivers the rented items to the contractors' jobsites. The Employer's main facility is located in Allentown, Pennsylvania. The Employer also leases a tool trailer at a Procter and Gamble facility in Mehoopany, Pennsylvania, which is located about two hours away from the Allentown facility. The lease became effective in August 2000 and has been renewed on an annual basis since then.

Branch Manager Tom Burleigh is responsible for the overall supervision of employees at both locations. Service Manager Greg Dunkelberger directly oversees all of the Employer's mechanical work.³ The Employer currently employs two Truckdrivers, two Shop Mechanics, two Road Mechanics, two Sales Coordinators, and one Tool Room Coordinator.⁴

² The Petitioner has attempted to supplement its brief to add additional information concerning the Sales Coordinators' compensation. However, as this information was not part of the record, it will not be considered.

In its brief, the Employer described pre-hearing conversations between the Employer's representative and the Petitioner's representative concerning the classifications to be included in the unit. As these discussions were not part of the record, they were not appropriately included in the brief and have not been considered.

³ At the hearing, the parties stipulated that Dunkelberger is a supervisor within the meaning of Section 2(11) of the Act.

⁴ The Employer also employs one clerk and an unspecified number of outside sales representatives. At the hearing, the parties stipulated that the clerks and outside sales representatives should be excluded from the bargaining unit.

II. RELEVANT LEGAL STANDARDS

The Appropriate Unit

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See e.g., *The Boeing Company*, 337 NLRB No. 24, slip op. at 2 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, frequency of contact and interchange among employees, and similarities in wages, hours, benefits, and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289, 1290 (2000); *Esco Corp.*, 298 NLRB 837 (1990). The Petitioner's desire is a relevant consideration, but it is not determinative of the appropriateness of the unit. *Florida Casino Cruises, Inc.*, 322 NLRB 857, 858 (1997); *Airco, Inc.*, 273 NLRB 348 (1984).

It is well-settled that a single-location unit is presumptively appropriate for collective bargaining. *D & L Transportation, Inc.*, 324 NLRB 160 (1997); *J & L Plate*, 310 NLRB 429 (1993). This presumption does not apply, however, when the Petitioner seeks a multi-location unit. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322, fn. 1 (1992). Moreover, the presumption in favor of a single-location unit can be overcome by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit. *Cargill, Inc.*, 336 NLRB 1114 (2001); *New Britain Transportation Co.*, 330 NLRB 397 (1999). In determining the appropriateness of a multi-location unit, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, supra; *Globe Furniture Rentals*, 298 NLRB 288 (1990).

Dual-Function Employee Status

The test for whether a dual function employee, i.e., an employee who performs at least two functions for the same employer, should be included in a unit is whether the employee regularly performs unit work for sufficient periods of time to demonstrate that he or she has a substantial interest in the

unit's wages, hours, and conditions of employment. *Medlar Electric, Inc.*, 337 NLRB No. 133 (2002); *Continental Cablevision of St. Louis County, Inc.*, 298 NLRB 973 (1990); *Berea Publishing Co.*, 140 NLRB 516, 519 (1963). If an employee performs a substantial amount of unit work, he or she may be included in the unit without regard to community-of-interest factors. *Oxford Chemicals, Inc.*, 286 NLRB 187 (1987); *Fleming Industries, Inc.*, 282 NLRB 1030, fn. 1 (1987).

III. FACTS

A. Job Functions

The *Tool Room Coordinator*, Erik Brewer, is the only employee who is based at the Procter and Gamble site in Mehoopany. He is primarily responsible for supplying tools, equipment, and consumables to contractors at the site.⁵ The contractors place orders for these items with Brewer, who then transmits the orders to Branch Manager Burleigh. Burleigh sends the necessary purchase orders to Brewer, and Brewer then obtains the requested items. About once a week, Brewer performs minor mechanical work, such as repairing hand tools and equipment, performing tune-ups, and changing batteries, hoses, cords, and filters, but he does not perform major mechanical repairs. If a major repair is required, either a Road Mechanic will travel to make the repair at the Mehoopany site, or the equipment will be transported to the Allentown facility. The Tool Room Coordinator spends about five percent of his time arranging for the rental of large equipment and 95 percent of his time arranging for the rental of small tools and consumables. In performing his functions, he uses a computer to track inventory.

The *Sales Coordinators* spend about 95 percent of their time arranging for the rental of large equipment, and the remainder of their time renting smaller items. They work behind a counter taking telephone calls from customers and using a computer to track outgoing and incoming inventory. Unlike Brewer, they also prepare contracts for execution by the customers. Brewer and the Sales Coordinators quote prices to customers and carry business cards.

The *Road Mechanics* travel to customers' jobsites to make necessary repairs on equipment and tools, while the *Shop Mechanics* make repairs at the Allentown facility. Mechanics speak with customers to ascertain the nature of the equipment problem and then contact the Allentown facility to order the necessary parts for their repairs.⁶ The *Truckdrivers* deliver equipment to the customers' jobsites using tractor-trailers.

B. Contact, Integration, and Interchange

There is extensive contact between the Tool Room Coordinator and employees in some of the other classifications. Road Mechanics visit the Employer's Mehoopany site about two to three times per week to repair equipment, and Brewer assists them with these repairs. Brewer also sees the

⁵ Consumables are items used in conjunction with the tools and equipment, such as drill bits and saw blades.

⁶ This Decision will refer to the Shop Mechanics and Road Mechanics collectively as Mechanics.

Truckdrivers when they deliver items to the Mehoopany site. He visits the Allentown facility at least two or three times per year to pick up needed tools or equipment.

Sales Coordinators also interact frequently with other employees. Sales Coordinator Heitzman visits the Mehoopany site about once a week to make deliveries. Sales Coordinators also speak to Brewer on the telephone about 20 to 30 times per day. In addition to their frequent discussions with the Tool Room Coordinator, Sales Coordinators regularly communicate with the Truckdrivers, to ensure the timely delivery of equipment, and with Mechanics, discussing what items need to be repaired in what order.

There is also significant interchange between the Sales Coordinators and other employees. Heitzman, who had been a Truckdriver before becoming a Sales Coordinator and has a Department of Transportation license, regularly spends about eight to twelve hours a week delivering equipment in a tractor-trailer. He also fills in for Truckdrivers for about two to three months per year when the Truckdrivers are ill or on vacation. The other Sales Coordinator, Joe Arndt, delivers equipment about one to two hours per week in a pick-up truck. Either a Sales Coordinator or a Mechanic substitutes for Brewer when he is ill or on vacation.

C. Compensation, Labor Relations Policies, and Training

The Mechanics, Truckdrivers, Tool Room Coordinator, and Sales Coordinators are all paid on an hourly basis and are required to use a time clock to record their working hours.⁷ Shop Mechanics and Road Mechanics are paid between \$19.40 and \$20.40 per hour, Truckdrivers are paid \$19.10, the Tool Room Coordinator is paid about \$16.50, and Sales Coordinators are paid between \$13.60 and \$16.60. When Heitzman performs truckdriving duties, he is paid at the higher Truckdriver wage rate. All employees receive the same fringe benefits.

The Tool Room Coordinator and Sales Coordinator positions do not require any specialized degree or qualifications. Rather, the skills necessary for these positions are obtained through prior work experience and on-the-job training. The Tool Room Coordinator and Sales Coordinators all receive computer training, but the Sales Coordinators receive additional computer training to enable them to prepare contracts. Mechanics hold Department of Transportation Inspection certifications. The same labor relations policies and work rules apply to all employees. Unlike other employees, Brewer works four 10-hour shifts per week.⁸

D. Supervision

Branch Manager Burleigh is the ultimate supervisor for all of the employees, and he maintains control over all personnel matters for both the Allentown and Mehoopany sites. There are no

⁷ Brewer is required to fax his timecard to Allentown.

⁸ The record does not indicate the working hours of other employees.

supervisors stationed at the Mehoopany site. All employees must have Burleigh's approval before working overtime.

Burleigh directly supervises the Sales Coordinators and the Tool Room Coordinator. The Truckdrivers report to the Sales Coordinators, who then report to Burleigh.⁹ Service Manager Dunkelberger oversees the work assignments of the Road Mechanics and Shop Mechanics, as well as Brewer's mechanical work.

IV. ANALYSIS

The Tool Room Coordinator

The Employer's operations are highly centralized; there is no separate supervision at the Mehoopany site, Burleigh exercises ultimate supervision over both facilities, and Dunkelberger oversees all employees' Brewer's mechanical work. Brewer does not work autonomously but is in constant contact with Burleigh and other employees at the Allentown facility. Additionally, the Tool Room Coordinator regularly works and interacts with the Road Mechanics, and they perform some of the same functions. Thus, several times each week Brewer assists Road Mechanics with their repairs when they come to the Mehoopany site. He also performs some mechanical work on his own, although he does not do major projects, and like Brewer, the Mechanics interact with customers and order parts. Mechanics have substituted for Brewer when he was absent. In addition to the Mechanics, Brewer also has regular contact with Truckdrivers when they visit the Mehoopany site. All of the Employer's employees are paid on an hourly basis and receive the same benefits, although the Mechanics and Truckdrivers are paid at a higher rate, and all employees abide by the same work rules and labor relations policies. The fact that the Tool Room Coordinator is based at a different site, two hours away from the Allentown facility, militates in favor of excluding him from the unit. However, this factor is outweighed by the Employer's centralization of operations, Brewer's regular contact and interchange with other employees, common supervision, and common benefits and work rules. I therefore find that the Tool Room Coordinator shares a community of interest with the Mechanics and Truckdrivers. Accordingly, a unit encompassing both facilities is appropriate, and the Tool Room Coordinator should be included in the unit. See *Trane*, 339 NLRB No. 106, slip op. at 3 (2003); *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000); *Macy's West, Inc.*, supra, 327 NLRB at 1223.

The Sales Coordinators

The Sales Coordinators have daily interaction with the Tool Room Coordinator, Truckdrivers, and Mechanics. The Sales Coordinators and Tool Room Coordinator also share the same direct supervisor and engage in many of the same tasks, i.e., arranging rentals, ordering equipment and tools, and keeping track of inventory. Moreover, a significant percentage of Heitzman's regular working time is spent performing truckdriving duties, and Arndt also does some delivery work, using a smaller

⁹ No party contends that the Sales Coordinators are supervisors within the meaning of Section 2(11) of the Act, and the record contains no evidence indicating that they exercise or possess supervisory authority.

vehicle. Heitzman additionally fills in for Truckdrivers about two to three months per year when they are ill or on vacation, and the Sales Coordinators sometimes fill in for Brewer when he is absent. The Sales Coordinators share similar terms and conditions of employment with the Mechanics, Truckdrivers, and Tool Room Coordinator. Thus, the same work rules and labor relations policies apply to all employees, and all of the employees are paid on an hourly basis and receive the same fringe benefits.

Considering that the Sales Coordinators perform some of the same tasks as unit employees under common supervision, have regular contact and interchange with unit employees, and share similar benefits, work rules and compensation, I find that the Sales Coordinators share a community of interest with Truckdrivers, Mechanics, and the Tool Room Coordinator, and they must be included in the unit. *The Boeing Company*, 337 NLRB No. 24, slip op. at 2 (2001); *Sears, Roebuck & Co.*, supra, 319 NLRB 607 (1995).

Heitzman's Status as a Dual Function Employee

In addition to finding that Sales Coordinators should be included in the unit on community-of-interest grounds, I further find that Sales Coordinator Heitzman should be included as a dual-function employee. Heitzman spends about 20 to 30 percent of his time performing truckdriving duties every week and also substitutes for Truckdrivers when they are absent from work. When he serves as a Truckdriver, he is paid at the Truckdriver rate, which is higher than his rate as a Sales Coordinator. As he regularly performs unit truckdriving work for a substantial period of time, I shall include him in the unit as a dual-function employee. *Medlar Electric, Inc.*, supra.¹⁰

Dismissal of Petition

The Petitioner indicated at the hearing that it is not willing to proceed to an election in any unit found appropriate other than the unit covered by its amended petition, i.e. Truckdrivers, Road Mechanics, Shop Mechanics, and the Tool Room Coordinator. As I have found that the unit must also include the Sales Coordinators, the petition shall be dismissed.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

¹⁰ I would find Heitzman to be an eligible dual-function employee even if community-of-interest factors were to be evaluated. Cf. *Oxford Chemicals*, supra.

3. The Petitioner claims to represent certain employees of the Employer.
4. The petition does not seek an appropriate unit and is therefore dismissed.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 6, 2003**.

Signed: September 22, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

Classification Index Numbers

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